Supreme Court, U.S.
FILED

971759 APR 28 1998

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No. _____

In The

Supreme Court of the United States

October Term, 1997

RESEARCH TRIANGLE INSTITUTE,
Petitioner,

vs.

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, consisting of Alan Greenspan in his official capacity as chairman, and Edward W. Kelley, Jr., Lawrence B. Lindsey, Susan M. Phillips and Janet Yellen in their capacities as members of the Board of Governors; and THE UNITED STATES OF AMERICA.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In ruling that sovereign immunity barred petitioner's contractual claim against the respondents Board of Governors of the Federal Reserve System and the United States of America, did the Court below disregard and misconstrue the statutes and decisions which establish that this defense had been waived?

PARTIES TO THE PROCEEDING

Petitioner, Research Triangle Institute ("RTI"), is a non-profit corporation, established by the University of North Carolina at Chapel Hill, North Carolina State University and Duke University. RTI has no parent company and no subsidiaries.

The Respondents are as stated in the caption.

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Appendix B - Opinion of the United States District Court for the Middle District of North Carolina Filed February 14, 1997 ..... 13a

Petitioner, Research Triangle Institute ("RTI"), respectfully requests that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on December 29, 1997.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at *Research Triangle Institute v. The Board of Governors of the Federal Reserve System*, 132 F.3d 985 (4th Cir. 1997) (App. A). The opinion of the district court is reported in *Research Triangle Institute v. The Board of Governors of the Federal Reserve System*, 962 F.Supp. 61(M.D.N.C 1997) (App. B).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 29, 1997. On March 20, 1998, the Supreme Court of the United States extended the time within which to file a petition for a writ of certiorari in this case to and including April 28, 1998.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THIS CASE

12 U.S.C. § 243 provides:

> The Board of Governors of the Federal Reserve System shall have power to levy semiannually upon the Federal reserve banks, in proportion to their capital stock and surplus, an assessment sufficient to pay its estimated

> expenses and the salaries of its members and employees for the half year succeeding the levying of such assessment, together with any deficit carried forward from the preceding half year, and such assessments may include amounts sufficient to provide for the acquisition by the Board in its own name of such site or building in the District of Columbia as in its judgment alone shall be necessary for the purpose of providing suitable and adequate quarters for the performance of its functions....

12 U.S.C. § 244 provides:

> The principal offices of the Board shall be in the District of Columbia. At meetings of the Board the chairman shall preside, and, in his absence, the vice chairman shall preside. In the absence of the chairman and the vice chairman, the Board shall elect a member to act as chairman pro tempore. The Board shall determine and prescribe the manner in which its obligations shall be incurred and its disbursements and expenses allowed and paid, and may leave on deposit in the Federal Reserve banks the proceeds of assessments levied upon them to defray its estimated expenses and the salaries of its members and employees, whose employment, compensation, leave, and expenses shall be governed solely by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith; and funds derived from such assessments shall not be construed to be Government funds or appropriated moneys....

12 U.S.C. § 248 provides:

> The Board of Governors of the Federal Reserve System

shall be authorized and empowered:

(a) ...

(j) **Exercising supervision over reserve banks**

To exercise general supervision over said Federal reserve banks.

...

(p) **Authority**

The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 1841 of this title), or other entity, or the administration of its operations.

12 U.S.C. § 341 provides:

Upon the filing of the organization certificate with the Comptroller of the Currency a Federal Reserve bank shall become a body corporate and as such, and in the name designated in such organization certificate, shall have power –

First. To adopt and use a corporate seal.

Second. To have succession after February 27, 1927, until dissolved by Act of Congress or until forfeiture of franchise for violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law or equity.

...

STATEMENT OF THE CASE

Petitioner Research Triangle Institute ("RTI") is a non-profit corporation headquartered at the Research Triangle Park in North Carolina and organized by the University of North Carolina at Chapel Hill, North Carolina State University, and Duke University. Its purpose is to perform scientific research and prepare studies and reports. The Respondent Board of Governors controls the Federal Reserve System which was originally established in 1913.[1] The Board is composed of seven full-time members appointed by the President, by and with the advice and consent of the Senate, for terms of fourteen years. 12 U.S.C. § 241. The United States is divided into Federal Reserve Districts, each of which has a Federal Reserve Bank. 12 U.S.C. § 222. Every national bank must become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve Bank of its district.[2] 12 U.S.C. § 222. State banks may also become members of the Federal Reserve System pursuant to such rules and regulations as the Board of Governors may prescribe. 12 U.S.C. § 321.

The Board levies assessments semi-annually upon the Federal Reserve Banks, in proportion to their capital stock and surplus, in amounts sufficient to pay estimated expenses and salaries of the Board's members and employees for the next half year. 12 U.S.C. § 243. The Federal Reserve Banks obtain funds to pay these assessments and the Banks' other expenses from fees for their services, which are priced according to a schedule prescribed by the Board. 12 U.S.C. § 248a.

On November 3, 1987, the Board issued a Request for

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[1]The Federal Reserve System is the subject of Sections 221-522 of Title 12 of the United States Code.

[2]Thereupon the national bank also becomes an insured bank under the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811 *et seq.*

Proposal for a National Survey of Small Business Finances. According to the Request, the Board was seeking a contractor to make a survey of diverse small businesses and to compile information about their sources of financing.[3] After a fixed price contract had been awarded to RTI on February 2, 1988, the Board changed some of its contract requirements, requested extra work beyond that originally contemplated by the parties, and failed to provide the support called for by the contract.

Because of the Board's numerous changes in the contract requirements, RTI made a timely request for an equitable adjustment in the manner specified by its contract with the Board. When the requested equitable adjustment was denied, RTI pursued unsuccessfully a multi-step administrative appeal. Finally, on May 5, 1990, J. Virgil Mattingly Jr., General Counsel to the Board, wrote to RTI that, "Your claim has been considered and denied by the full Board of Governors. This denial represented final agency action and was transmitted to you by letter dated February 12, 1990. At that time you exhausted all administrative remedies before the Board of Governors. If you wish to pursue your claim, you may file a complaint with the appropriate federal district court."

After further fruitless discussions with the Board, RTI sued the Respondents in the District Court to obtain payment of the unforeseen costs which had given rise to the request for an equitable adjustment. Thereafter on motion of the

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[3]Although not in effect at the time of Request for Proposal, 12 U.S.C. § 252 now provides that not later than twelve months after September 30, 1996 and once every sixty months thereafter the Board, "shall conduct a study and submit a report to the Congress detailing the extent of small business lending by all creditors." The contents of this study are prescribed by the statute. See Pub.L. 104-208, Div. A, Title II, Sec. 2227, Sept. 30, 1996, 110 Stat. 3009-417. This statute confirms implicitly that the Board's action in requesting proposals for the Survey of Small Business Finances was within the authority of the Board and consistent with Congressional intent.

Respondents, the complaint was dismissed on grounds of sovereign immunity. Petitioner appealed the adverse decision. In turn, the Court of Appeals affirmed the dismissal. Petitioner now seeks a writ of certiorari to review the correctness of the dismissal on grounds of sovereign immunity.

REASONS FOR GRANTING THE WRIT

I. The Petition Should Be Granted Because the Lower Court's Opinion Conflicts with this Court's Decisions as to the Scope of Sovereign Immunity.

The premise for the opinion in the Court of Appeals is that a waiver of sovereign immunity must "be clear, express, and unequivocal" and that acts of the sovereign which "imply" or are "equivalent" to a waiver of immunity must be disregarded. (App. 12a). However accurate this premise may be with respect to liability for torts or regulatory activity, it is at odds with this Court's precedents concerning "commercial" contracts of governmental agencies.

Thus, in *Federal Deposit Insurance Company v. Meyer*, 510 U.S. 471 (1994), this Court was concerned with statutory language that authorized the FDIC to "sue and be sued." In the context of the activity involved, the Court ruled that the statute was to be liberally construed despite the usual rule of strict construction in determining whether sovereign immunity has been waived.

In *Meyer*, the Court cited as a precedent *Loeffler v. Frank*, 486 U.S. 549 (1988) which concerned a suit against the Postal Service – another "agency" of the United States. There the Court had ruled that a statutory grant to the Postal Service of authority to "sue and be sued" should be liberally construed to constitute a waiver of sovereign immunity. As part of its rationale for the liberal construction, the Court pointed out that

Congress had launched the Postal Service into the commercial world and given it the status of a private commercial enterprise. That status would be inconsistent with holding that sovereign immunity had not been waived as to its activities.

In *Meyer*, this Court also cited *Federal Housing Authority v. Burr*, 309 U.S. 242 (1944), where "to-sue-and-be-sued" language had likewise been liberally construed. In language that has never been repudiated by this Court, it was stated:

> As indicated in *Keifer & Keifer v. Reconstruction Finance Corp.*, [306 U.S. 381], we start from the premise that such waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. This policy is in line with the current disfavor of the doctrine of governmental immunity from suit, as evidenced by the increasing tendency of Congress to waive the immunity where federal governmental corporations are concerned. *Keifer & Keifer v. Reconstruction Finance Corp., supra.* Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to "sue and be sued," it cannot be lightly assumed that restrictions on that authority are to be implied. Rather if the general authority to "sue and be sued" is to be delimited by implied exceptions, it must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the "sue and be sued" clause in a narrow sense. In the absence of such showing, it must be presumed that when Congress

> launched a governmental agency into the commercial world and endowed it with authority to "sue or be sued," that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.

Id. at p. 245.

Of special relevance to the present case is this passage from the Court's opinion in *Burr*:

> There is some point made of the fact that suit was brought against the Federal Housing Administration rather than against the Administrator. But when the statute authorizes suit by or against the Administrator "in his official capacity" we conclude that that permits actions by or against the Federal Housing Administration, since by express terms of the Act all of the powers of the latter "shall be exercised" by him. Hence, action by him in the name of the Federal Housing Administration would be action in his official capacity.

Burr, at 249-50.

Also relevant here is the recent refusal of the Supreme Court to apply the doctrine of "sovereign act" in a way that would have contradicted the reasonable expectations of many financial institutions. *United States v. Winstar Corporation, et. al.*, 518 U. S. 839 (1996). There the plurality opinion pointed out,

> If... contracts are made in reliance on the law of contract and without specific provision for default mechanisms, should all the private contractors be denied a remedy for damages unless they satisfy the unmistakability doctrine? The answer is obviously no

> because neither constitutional avoidance nor any apparent need to protect the government from the consequences of standard operations could conceivably justify applying the doctrine. Injecting the opportunity for unmistakability litigation into every common contract action would, however, produce the untoward result of compromising the Government's practical capacity to make contracts, which we have held to be 'of the essence of sovereignty' itself. *United States v. Bekins*, 304 U.S. 27, 51-52 (1938). From a practical standpoint, it would make an inroad on this power, by expanding the Government's opportunities for contractual abrogation, with the certain result of undermining the Government's credibility at the bargaining table and increasing the cost of its engagements. As Justice Brandeis recognized, '[p]unctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors.' *Lynch v. United States*, 292 U.S. 571, 580 (1934).

Winstar, pp. 2459-2460 (footnotes omitted). Although *Winstar* concerned the doctrine of "sovereign act," its rationale as to the government's credibility at the bargaining table and the "credit of public as well as private debtors" argues also against the application of "sovereign immunity" in a way that compromises public credit and "the government's practical capacity to make contracts."

Now that the relevant principles to be considered with respect to sovereign immunity have been set out, the next step is to examine the statutes which relate to the Board of Governors. 41 U.S.C. § 601, which concerns contract disputes, defines "executive agency" to include " an independent establishment as defined by section 104 of Title 5 . . ." In turn, 5 USC § 104 states that "independent establishment" means

"an establishment in the executive branch ... which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment."[4] As an "executive agency", the Board is subject to the procurement procedures prescribed by Congress. 41 U.S.C. § 252. Likewise, as an "executive agency," the Board is subject to the statutory procedures for resolving "contract disputes." 41 U.S.C. § 601(2). If the contract dispute is not resolved otherwise, suit may be instituted in the United States Court of Federal Claims. 41 U.S.C. § 609.

Unlike executive departments, the Board relies not on funds appropriated by Congress but instead on semi-annual assessments against the Federal Reserve Banks for estimated expenses. 12 U.S.C. § 243. Those funds "shall not be construed to be government funds or appropriated moneys." 12 U.S.C. § 244. Each Federal Reserve Bank is authorized by Congress to "make contracts" and "to sue and be sued, complain and defend, in any court of law or equity." 12 U.S.C. § 241. This Court's opinions in *Meyer*, *Loeffler* and *Burr*, all supra, make clear that this language constitutes a broad waiver of sovereign immunity. On the other hand, the enumerated powers granted to the Board do not include either the power to make contracts or to sue and be sued. 12 U.S.C. 248. Thus, the Board has been directed as an "executive agency" to follow procurement procedures and is subject to a procedure for resolving contract disputes with "judicial review" available; but the Board is not specifically authorized by statute either to make contracts or to

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[4]The "Federal Reserve System" -- including the Board and the Federal Reserve Banks -- is listed as one of the "Independent Establishments and Government Corporations" in *The United States Government Manual* promulgated by the Office of the Federal Register, National Archives and Records Administration.

sue and be sued.[5]

Two alternative views are available in determining from the statutes whether sovereign immunity bars Petitioner's claim. The first is that the Board lacked any authority from Congress either to request proposals or to enter a contract in its own name, because no such authority is contained in the statute which enumerates its specific powers. Indeed, according to this view, the Board had no authority to enter any contract whatsoever in its own name – whether a lease of space, a contract with a consultant for a study or report, or an agreement for some other type of service. On the other hand, a Federal Reserve Bank may enter whatever contract it chooses and, in the event of breach, may sue or be sued on that contract in an appropriate district court.

In that event, a person who negotiates a contract with the Federal Reserve Board has placed himself or herself in a trap. Indeed, the Board – presumably unwittingly – was deceiving RTI and other prospective bidders when it requested proposals for a contract and thereby implicitly represented that it had authority to enter a contract, so that – as is true of commercial contracts generally – the other party could sue in the event of

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[5]However, 12 U.S.C. § 248(p) contains the provision that:

> The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, *or in any action, suit, or proceeding, to which the Board is a party and which involves the Board's* regulation or supervision of any bank, bank holding company (as defined in section 1841 of this title), or other entity, or the *administration of its operations*.

(emphasis added). Obviously Congress anticipated that the Board might be a party to litigation involving the "administration of its operations" -- even though it gave no express power for the Board to enter contracts concerning such "administration."

failure by the Board to comply with its contractual obligations.[6]

The second approach is much more consistent with this Court's opinions, as well as with fundamental fairness and the reasonable expectations of the parties. It relies, in part, on the language that subjects the Board as an "executive agency" to the same procurement procedures that apply to executive departments and to the procedures Congress has provided for resolving contract disputes -- including commencement of actions in the United States Court of Federal Claims. It infers from this language that Congress intended the Board to be subject to suit as an "executive agency" in the Court of Federal Claims, in which event a judgment would be paid out of funds appropriated by Congress.

The second approach also relies on the statutory language authorizing the Federal Reserve Banks to "sue and be sued" -- which language has been repeatedly interpreted by this Court as a broad waiver of sovereign immunity. If a Federal Reserve Bank is sued successfully for breach of contract, the judgment is paid out of the non-appropriated funds received by the Bank for its services. These same funds provide the usual source for paying the expenses of the Board -- this payment being accomplished by semi-annual levies of estimated expenses. These are funds as to which Congress has waived sovereign immunity in the hands of the Banks -- without providing in any way that they would become clothed in sovereign immunity when they are turned over.

Under these circumstances the applicable statutes should

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[6]This view implies that Petitioner RTI should be pleased to have received pay for its services because the Board, having acted without statutory authority, could not have been forced by a court to perform any of its obligations, express or implied, under the purported contract. This, in turn, might have ramifications as to the personal liability to RTI of the individuals who executed the contract on the Board's behalf without any statutory authority to do so.

be construed together to mean that when the Board chooses to enter a contract in its own name for purposes authorized by Congress – with the obvious expectation that its obligations under the contract will be paid out of funds provided by the Federal Reserve Banks as to which sovereign immunity has been specifically waived by statute – the Board is precluded from claiming sovereign immunity if it is sued for failure to make the payments called for by the contract.

The situation here is very similar to that involved in *Burr* where, although the statute authorized the suit by or against the "Federal Housing Administrator," this Court permitted an action to be maintained against the "Federal Housing Administration." Unless some reasonable interpretation is given to the scope of a waiver of sovereign immunity, the result will inevitably be injury to the credibility and the credit of the government and its agencies. The result is contrary to the teachings of this Court.

II. The Petition Should be Granted Because the Lower Court's Opinion Conflicts with Those of Other United States Courts of Appeal.

Analogous to the present case is *McDonald's Corporation v United States*, 926 F.2d 1126 (Fed. Cir. 1991), where the Court of Appeals rejected a technical interpretation which would have defeated statutory intent by allowing sovereign immunity to be plead when a contract had been entered in the name of NAVRESSO, an entity not specified in the Tucker Act, but clearly included within its intent. NAVRESSO had been created by the Navy to help procure goods and services for Navy Exchanges, but was not itself an exchange. The express statutory waiver of sovereign immunity as to non-appropriated fund instrumentalities refers only to military and Navy exchanges. However, the Navy exchanges were providing the funds from which it was intended that payments would be made pursuant to contracts entered by

NAVRESSO. Under these circumstances the Federal Circuit held that the waiver of sovereign immunity extended to the new organization not specified by statute.

The Court below distinguished *McDonald's* from the present case on the ground that the Board is separately established by statute, while the organization created by the Navy had no separate statutory basis. However, the Board of Governors is part of the Federal Reserve System which is the subject of a separate Chapter of the United States Code. The funds for that System are provided by the Federal Reserve Banks, as to which sovereign immunity has been specifically waived. Thus, the situation is quite analogous to that of NAVRESSO, which coordinated the procurement activities if individual Navy Exchanges scattered across the world and is sustained by the non-appropriated funds these exchanges generate.[7]

If this Court were to conclude however, that the Board itself could not be sued in a district court, Petitioner RTI submits that Tucker Act liability exists on the part of the United States. The lower courts' rejection of this liability conflicts with the result and rationale of *L'Enfant Plaza Properties, Inc. v. United States*, 668 F.2d 1211 (Ct.Cl. 1982). At issue there was the liability of the United States in an action brought in the Court of Claims for payments due under a lease of office space entered by the Comptroller of the Currency. The Comptroller is supported by funds of regulated banks in much the same manner that the

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[7]The rationale of the lower court is also at odds with decisions that an equitable adjustment clause in a government contract constitutes a waiver of sovereign immunity that might otherwise exist as to interest. *General Railway Signal Co. v. WMATA*, 875 F.2d 320 (D.C. Cir. 1989). Here the contract prepared by the Board pursuant to the requirements of the applicable statutes and regulations contained an "equitable adjustment" clause. The Board's entry into a contract which it prepared and which contained such a clause should itself be construed as a waiver by the Board of sovereign immunity as to the contract.

Board of Governors is supported by assessments against the Federal Reserve Banks. Because the funds from this source had been adequate, Congress had not appropriated funds for the Comptroller since 1947. Nonetheless, the Court of Claims ruled that the United States could still be held liable.

As the Court of Claims explained:

> The fact that the Comptroller has been financially self-sufficient is not dispositive. There must be a clear expression by Congress that the agency was to be separated from general federal revenues. *Breitbeck*, 205 Ct.Cl. at 212-13, 500 F.2d at 559. See *United States v. Hopkins*, 427 U.S. 123, 125, 96 S.Ct. 2508, 2510, 49 L.Ed.2d 361 (1976)(non-appropriated fund agency characterized as one denied by the Government any use of appropriated monies). Congress must have intended that the activity resulting in the claim was not to receive or be funded from appropriated funds. *Hughes Aircraft Co. v. United States*, 209 Ct. Cl. 446, 476, 534 F.2d 889, 907-08 (1976). To sustain jurisdiction here, the requirement is not that appropriated funds have been used for the activity but that under the agency's authorizing legislation Congress could appropriate funds if necessary. *Convery v. United States*, 220 Ct.Cl. ------, ------, 597 F.2d 727, 730 (1979); *De Mauro Constr. Corp. v. United States*, 215 Ct.Cl. 364, 375, 568 F.2d 1322, 1328 (1978). Jurisdiction under the Tucker Act must be exercised absent a firm indication by Congress that it intended to absolve the appropriated funds of the United States from liability for acts of the Comptroller. [Cites omitted]
>
> This limited application of the exception to our broad jurisdiction is consistent with the underlying policy of the rule excluding non-appropriated-agencies from our jurisdiction of not wanting to impose "an

> unauthorized burden on the public treasury." *Hughes*, 209 Ct.Cl. At 483-84, 534 F.2d at 912.
>
> The legislation governing this case does not preclude Congressional appropriation of funds to the Comptroller.

Id. at 1212.

Just as no statute precludes Congress from making appropriations to defray expenses and pay obligations of the Comptroller of the Currency, even though that office is regularly supported by assessments of regulated banks, Petitioner is unaware of any statute that precludes Congress from making appropriations to pay the expenses and obligations of the Board of Governors -- who, according to 5 U.S.C. § 104, constitute an "executive agency." Moreover, like the Comptroller the members of the Board of Governors are "officers" appointed pursuant to the Appointments Clause of the United States Constitution. Art. II, § 2, cl. 2. Petitioner submits that *L'Enfant Plaza* stands for the proposition that Tucker Act liability can be imposed with respect to such officers; and the lower courts' failure to apply that principle to the Board of Governors was in conflict with the decision by the Court of Claims.

Insofar as the action against the United States is concerned, the case could be transferred by the District Court to the United States Court of Federal Claims. Cf. 28 U.S.C. § 1292(d)(4). This would be especially appropriate since RTI proceeded in the manner set out in the letter to it from the Board's General Counsel.

III. The Petition Should Be Granted Because of the Importance of Resolving Uncertainty as to the Scope of Sovereign Immunity in the Contracts of Proliferating Executive Agencies.

In order to perform their duties properly in an ever-

changing world with an ever-increasing number of executive agencies, those agencies must contract for property or services that at one time might have been provided internally by the government. Thus, government-related activities may be performed in leased space, rather than in government-owned space; and services and information may be obtained from outside consultants, rather than furnished by federal employees. Under these circumstances – as *Winstar* reaffirms – it is important that agreements made on behalf of federal agencies have credibility. If doctrines such as "sovereign immunity" or "sovereign act" are misapplied in ways that defy the reasonable expectations of potential contractors and violate principles of fairness, the ability of the Government to enter into necessary contracts will be impaired.[8]

Petitioner submits that such a misapplication of doctrine has occurred in the case at hand. Perhaps the best evidence thereof is the letter to RTI from the Board's own General Counsel wherein he advised that all administrative remedies had been exhausted and "you may file a complaint with the appropriate federal district court." Petitioner does not assert that this letter constituted a waiver of sovereign immunity. However, it reveals that the Board's own legal adviser reasonably assumed that a contract entered by the Board was no more subject to sovereign immunity than a contract entered by a Federal Reserve Bank, as to which sovereign immunity has been expressly waived by statute.

It is important for the Government's credit and its ability to enter contracts that this Court grant a writ of certiorari and make clear that sovereign immunity will not be turned into a trap for those who deal in good faith with the Government and its

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[8]On the other hand, no government interest can be impaired by imposing liability on the Board which can then obtain funds for payment from its levies against the nonappropriated funds of the Federal Reserve Banks as to which sovereign immunity has been specifically waived.

agencies.[9] Moreover, it is important that this Court disavow any claim by a federal agency that it may negotiate and execute a contract and then utilize the doctrine of sovereign immunity to prevent its enforcement by the other party.[10]

CONCLUSION

The petition for certiorari should be granted to review the failure of the court below to apply properly the precedents of this Court and to resolve a conflict with other courts of appeal.

Respectfully submitted,

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[9]The importance of the issue here is reflected by the circumstance that the opinions of both the Court of Appeals and the District Court have been published.

[10]The principle of mutuality would also suggest that a contract unenforceable against a federal agency would be enforceable by that agency.